



# Right to a name and acquire a nationality

Public sector guidance sheet

[What is the right to a name and to acquire a nationality?](#)

[Where does the right to a name and to acquire a nationality come from?](#)

[When do I need to consider the right to a name and to acquire a nationality?](#)

[What is the scope of the right to a name and to acquire a nationality?](#)

[Can the right to a name and to acquire a nationality be limited?](#)

[Which domestic laws relate to the right to a name and to acquire a nationality?](#)

[What other rights and freedoms relate to the right to a name and to acquire a nationality?](#)

[Articles from relevant Conventions](#)

[Where can I read more about the right to a name and to acquire a nationality?](#)

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## Disclaimer

This material is provided to persons who have a role in Commonwealth legislation, policy and programs as general guidance only and is not to be relied upon as legal advice. Commonwealth agencies subject to the *Legal Services Directions 2005* requiring legal advice in relation to matters raised in this Guidance Sheet must seek that advice in accordance with the Directions.

## What is the right to a name and to acquire a nationality?

The right to a name and to acquire a nationality guarantees the right of children to registration immediately after birth to a name and to acquire a nationality.

## Where does the right to a name and to acquire a nationality come from?

Australia is a party to seven core international human rights treaties. The right to a name and to acquire a nationality is contained in articles 24(2) and 24(3) of the [International Covenant on Civil and Political Rights \(ICCPR\)](#).

See also article 5 of the [Convention on the Elimination of All Forms of Racial Discrimination \(CERD\)](#), article 9 of the [Convention on the Elimination of All Forms of Discrimination Against Women \(CEDAW\)](#), articles 7 and 8 of the [Convention on the Rights of the Child \(CRC\)](#) and article 18 of the [Convention on the Rights of Persons with Disabilities \(CRPD\)](#).

Article 8 of the CRC guarantees the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.

Article 9 of CEDAW guarantees women equal rights with men to acquire, change or retain their nationality and equal rights with men with respect to the nationality of their children.

Article 18 of the CRPD guarantees the right of persons with disabilities to acquire and change a nationality and not to be deprived of their nationality arbitrarily or on the basis of disability. It also provides that children with disabilities must be registered after birth and must have the right to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

## When do I need to consider the right to a name and to acquire a nationality?

You will need to consider the right to a name and to acquire a nationality when you are working on legislation, a policy or a program that relates to:

- the registration of births of children
- the acquisition or loss of citizenship
- issues of statelessness, or
- inter-country adoption.

This list should not be regarded as exhaustive.

## What is the scope of the right to a name and to acquire a nationality?

The main purpose of the obligation to register children after birth is to reduce the danger of abduction, sale of or traffic in children. The right of children to acquire a nationality entails an obligation on countries to adopt measures, both internally and in cooperation with other countries, to ensure that every child has a nationality when born. However, it does not necessarily require countries to give their nationality to every child born in their territory.

The issue of statelessness is dealt with in two treaties, the Convention Relating to the Status of Stateless Persons of 1954, and the Convention on the Reduction of Statelessness of 1961. The 1954 Convention defines 'stateless person' as a person who is not considered to be a national by any country under the operation of its law. The main obligation under the 1961 Convention is for a country to grant its nationality to a person born in its territory who would otherwise be stateless, although it allows countries to place conditions on the grant of nationality. Additional obligations are imposed in relation to the grant of nationality to persons who would otherwise be stateless but whose parents are nationals of the country. Australia is party to both the statelessness conventions. The 1961 Convention also contains provisions about loss of citizenship and deprivation of citizenship.

In international law, the terms 'nationality' and 'citizenship' are used interchangeably.

[Top of page](#)

## Can the right to a name and to acquire a nationality be limited?

### Derogation

Under article 4 of the ICCPR, countries may take measures derogating from certain of their obligations under the Covenant, including the right to a name and to acquire a nationality 'in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed'. Such measures may only be taken 'to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin'.

## Limitation

In international law, it is a matter for a country to determine under its own laws who are or can be regarded as its citizens. This right may be qualified by obligations in treaties to which the country is party, for instance the statelessness conventions.

## Which domestic laws relate to the right to a name and to acquire a nationality?

Section 12 of the *Australian Citizenship Act 2007* provides that a person born in Australia is an Australian citizen if a parent of the person is an Australian citizen, or a permanent resident, at the time the person is born or the person is ordinarily resident in Australia for the first 10 years of the person's life. Other provisions of Division 1 of Part 2 of the Act make provision for the automatic acquisition of Australian citizenship in other circumstances, such as for adopted children. Division 2 of Part 2 of the Act makes provision for eligibility for citizenship by descent and citizenship by conferral.

Sections 16 and 21 of the Citizenship Act make special provision regarding the eligibility of stateless persons to acquire Australian citizenship. Under the Citizenship Act, persons with enduring physical and mental incapacity are not required to complete the citizenship test in order to be eligible for citizenship and assistance with the test is provided to persons with other types of impairment.

## What other rights and freedoms relate to the right to a name and to acquire a nationality?

Circumstances giving rise to consideration of the right to a name and to acquire a nationality may also be relevant to:

- the right to protection of children under article 24(1) of the ICCPR
- the right to freedom from exploitation, violence and abuse
- the right to protection of the family under article 23 of the ICCPR.

## Articles from relevant Conventions

### International Covenant on Civil and Political Rights

#### Article 24

- Every child shall be registered immediately after birth and shall have a name.
- Every child has the right to acquire a nationality.

See also: CRC articles 7 and 8; CEDAW article 9; CRPD article 18.

# Where can I read more about the right to a name and to acquire a nationality?

- [United Nations, Office of the High Commissioner for Human Rights, Human Rights Bodies](#) (human rights treaty bodies that monitor implementation of the core international human rights treaties)
- [UN Human Rights Committee General Comment No 17](#) (see paragraphs 7 and 8)
- [UN Committee on the Rights of the Child General Comment 7](#) (see paragraph 25 on registration of births)
- [Convention Relating to the Status of Stateless Persons of 1954](#)
- [Convention on the Reduction of Statelessness of 1961](#)
- [Australian Citizenship Act 2007](#)

[Top of page](#)